

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

-----X

PASQUALE A. GRELLA and  
ROSETTA GRELLA,

**ANSWER**

Plaintiffs,

08 CV 2067

-against-

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant.

-----X

Defendant NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK,  
by its attorneys, Landman Corsi Ballaine & Ford P.C., hereby answers the Complaint herein as  
follows:

**ANSWER AS TO JURISDICTION AND PARTIES**

FIRST: Defendant Amtrak denies knowledge or information sufficient to form a belief  
as to the truth of the allegations contained in paragraph "1" of the Complaint and refers all matters  
of law to the Court.

SECOND: Defendant Amtrak denies knowledge or information sufficient to form a belief  
as to the truth of the allegations contained in paragraph "2" of the Complaint and refers all matters  
of law to the Court.

THIRD: Defendant Amtrak denies knowledge or information sufficient to form a belief  
as to the truth of the allegations contained in paragraph "3" of the Complaint.

FOURTH: Defendant Amtrak denies knowledge or information sufficient to form a belief  
as to the truth of the allegations contained in paragraph "4" of the Complaint except admits that

Amtrak was incorporated pursuant to an act of Congress.

FIFTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Complaint except admits that National Railroad Passenger Corporation's trade name is "Amtrak."

**ANSWER AS TO THE FIRST CLAIM**

SIXTH: With respect to the allegations contained in paragraph "6" of the Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "5" of this Answer with the same force and effect as if fully set forth at length herein.

SEVENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the Complaint.

EIGHTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the Complaint.

NINTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Complaint.

TENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the Complaint.

ELEVENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the Complaint.

TWELFTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the Complaint.

THIRTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the Complaint.

FOURTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Complaint.

FIFTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the Complaint and refers all matters of law to the Court.

SIXTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Complaint.

SEVENTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the Complaint.

EIGHTEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "18" of the Complaint.

NINETEENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the Complaint.

TWENTIETH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Complaint.

TWENTY-FIRST: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the Complaint.

TWENTY-SECOND: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of the Complaint.

TWENTY-THIRD: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of the Complaint.

TWENTY-FOURTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the Complaint.

TWENTY-FIFTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint and refers all matters of law to the Court.

TWENTY-SIXTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint and refers all matters of law to the Court.

TWENTY-SEVENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Complaint and refers all matters of law to the Court.

TWENTY-EIGHTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the Complaint and refers all matters of law to the Court.

TWENTY-NINTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the Complaint and refers all matters of law to the Court.

THIRTIETH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Complaint and refers all matters of law to the Court.

THIRTY-FIRST: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Complaint and refers all

matters of law to the Court.

THIRTY-SECOND: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of the Complaint and refers all matters of law to the Court.

THIRTY-THIRD: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the Complaint and refers all matters of law to the Court.

THIRTY-FOURTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Complaint and refers all matters of law to the Court.

THIRTY-FIFTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the Complaint and refers all matters of law to the Court.

THIRTY-SIXTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of the Complaint and refers all matters of law to the Court.

THIRTY-SEVENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "37" of the Complaint and refers all matters of law to the Court.

THIRTY-EIGHTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "38" of the Complaint.

THIRTY-NINTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "39" of the Complaint.

FORTY: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "40" of the Complaint.

FORTY-FIRST: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "41" of the Complaint.

FORTY-SECOND: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "42" of the Complaint.

FORTY-THIRD: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "43" of the Complaint.

FORTY-FOURTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "44" of the Complaint.

FORTY-FIFTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "45" of the Complaint.

FORTY-SIXTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "46" of the Complaint.

FORTY-SEVENTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "47" of the Complaint.

FORTY-EIGHTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "48" of the Complaint.

FORTY-NINTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "49" of the Complaint.

FIFTIETH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "50" of the Complaint.

FIFTY-FIRST: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "51" of the Complaint.

FIFTY-SECOND: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "52" of the Complaint.

FIFTY-THIRD: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "53" of the Complaint.

FIFTY-FOURTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "54" of the Complaint.

FIFTY-FIFTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "55" of the Complaint.

**ANSWER AS TO THE SECOND CLAIM (DERIVATIVE CLAIM)**

FIFTY-SIXTH: With respect to the allegations contained in paragraph "56" of the Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "1" through "55" of this Answer with the same force and effect as if fully set forth at length herein.

FIFTY-SEVENTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "57" of the Complaint and refers all matters of law to the Court.

FIFTY-EIGHTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "58" of the Complaint.

FIFTY-NINTH: Defendant Amtrak denies the truth of each and every allegation contained in the paragraph "59" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

SIXTIETH: Any injuries suffered by plaintiffs were caused solely by their own negligence and not by any negligence of the defendant.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

SIXTY-FIRST: Any injuries suffered by plaintiffs were caused, in part, by their own negligence, and any recovery by plaintiffs must be diminished in proportion to that part of their injuries attributable to his own negligence.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

SIXTY-SECOND: Any injuries suffered by plaintiffs were not caused by a negligent act or omission of defendant or any individual acting under his direction or control.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

SIXTY-THIRD: If plaintiffs have sustained any damages in this matter, which defendant denies, then defendant's liability, if any, shall be limited in accordance with Article 16 of the New York Civil Practice Law and Rules.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

SIXTY-FOURTH: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

SIXTY-FIFTH: Plaintiff fails to state a cause of action upon which relief may be granted.



**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

SIXTY-SIXTH: This action as it pertains to Rosetta Grella, is frivolous as the FELA does not permit claims for loss of consortium.

WHEREFORE, defendant NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK demands judgment dismissing the Complaint herein, together with their costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York  
March 20, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: 

Ronald E. Joseph (RJ9302)  
Attorneys for Defendant  
NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK  
120 Broadway, 27th Floor  
New York, New York 10271-0079  
(212) 238-4800

TO: Barry S. Huston (BH 2988)  
PERECMAN & FANNING, P.L.L.C.  
Attorneys for Plaintiffs  
250 West 57<sup>th</sup> Street  
Suite 401  
New York, NY 10107  
(212) 977-7033

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK    }  
COUNTY OF NEW YORK } ss.:

**Jelena Brigida**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at BROOKLYN, NEW YORK.

That on the 21st day of March, 2008, deponent served the within **ANSWER** upon

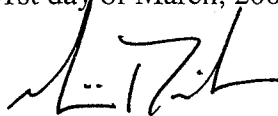
Barry S. Huston (BH 2988)  
PERECMAN & FANNING, P.L.L.C.  
Attorneys for Plaintiffs  
250 West 57<sup>th</sup> Street, Suite 401  
New York, NY 10107  
(212) 977-7033

attorneys in this s action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Jelena Brigida

Sworn to before me this  
21st day of March, 2008



Notary

**MIRIAM DEIKUN**  
Notary Public, State of New York  
No. 01DE6141377  
Qualified in Queens County  
Commission Expires February 21, 2010